

Allen Broadcasting Company, Inc.
WRBE-FM
Highway 198 West
Lucedale, Mississippi 39452
601-947-8151

August 23, 1995

Mr. William F. Caton
The Federal Communications Commission
1919 M Street, NW
Washington DC 20554

ORIGINAL

RE: Informal Response to "Notice of Appearance"
MM Docket Number 95-78 (RM-8619)
Allen Broadcasting Company, Inc.
Lucedale, Mississippi

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Transmitted herewith, on behalf of Allen Broadcasting Company, Inc., a counter-proponent in the Rule Making Proceeding identified above, is a response to a "Notice of Appearance" filed by Mark N. Lipp, Esq. of the law firm of Mullin, Rhyne, Emmons and Topel, P.C. on behalf of Petitioner Mary C. Glass.

While it is unusual to file any kind of response to a "Notice of Appearance", this response is necessary because Mr. Lipp's "Notice of Appearance" addresses certain procedural and substantive issues which are not usually contained in such a "Notice". Since Mr. Lipp's remarks will become part of the "Record" in this proceeding, Allen Broadcasting Company, Inc. believes a response is necessary and seeks leave to file its attached comments.

Should there be any questions about this mater, please contact me, directly.

Respectfully submitted,

By: Herman Kelly

Herman Kelly
Executive Vice President
Allen Broadcasting Company, Inc

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON DC 20554**

RECEIVED
AUG 19 1995
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)	
)	MM Docket Number 95-78
Amendment of Section 73.202(b))	RM-86-19
Table of Allotments)	RM-8678
FM Broadcast Stations)	
Stonewall, Mississippi and)	
Lisman, Alabama)	

TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

**Allen Broadcasting Company, Inc.
Informal Response to
Notice of Appearance of
Mary C. Glass**

1.) Comes Now, Allen Broadcasting Company, Inc. with an Informal Response to the "Notice of Appearance" submitted by counsel to Mary C. Glass in the above-captioned proceeding. Allen Broadcasting Company submitted for Commission approval a "Counterproposal in the Stonewall, Mississippi Rule Making Proceeding seeking consideration of its suggestion that the FCC substitute Channel 295C3 for Channel 295A at Lucedale, Mississippi and modification of the license of Station WRBE-FM accordingly. This counterproposal was filed on July 31, 1995 in accordance with the Commission's Notice of Proposed Rulemaking in MM Docket Number 95-78.

2.) On August 15, 1995, Mark N. Lipp, Esq. filed a "Notice of Appearance" on behalf of Petitioner Mary C. Glass. Allen Broadcasting Company, Inc. has no objection to Mr. Lipp's representation of Ms. Glass. Allen Broadcasting Company, Inc. does, however, take issue with several of the comments contained in that "Notice of Appearance" in that those comments

are inappropriate for a Notice of Appearance and may in fact prejudice Allen Broadcasting Company's counterproposal.

3.) In Section 3 of Mr. Lipp's "Notice of Appearance (page two), Mr. Lipp states:

"In addition, on July 31, 1995, Allen Broadcasting Company, Inc., licensee of Station WRBE-FM, Lucedale, Mississippi, filed a counterproposal seeking to substitute Channel 295C3 for Channel 295A and modify the license for Station WRBE accordingly. This counterproposal was not supported with a channel study demonstrating that channel 295C3 could be allotted to Lucedale consistent with Section 73.207(b) of the Commission's Rules. This deficiency has apparently caused the Allocations Branch to refuse acceptance of the Lucedale proposal".

4.) First of all, in response to Mr. Lipp's contention that Allen Broadcasting Company, Inc.'s proposal was unsupported by a "channel study" and thereby deficient, it should be noted that no citation to Commission rules or regulations is offered to support such a contention. As a matter of fact, there is no Commission Rule which requires that a channel study accompany either a "Petition for Rulemaking" or a "Counterproposal" in a Rulemaking proceeding. Furthermore, the FCC has routinely accepted "Counterproposals" and "Petitions for Rulemaking" without "channel studies". What has always been required is a.) a request for a specific channel; b.) co-ordinates to support the allocation request ; and c.) a statement by the Petitioner or Counter Proponent that it will submit an application for the channel if an allotment is made and, furthermore, that the proponent will build the facility if its application is granted.

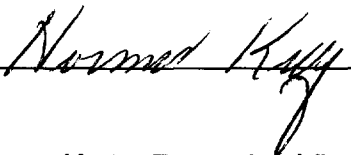
5.) In its Counterproposal, Allen Broadcasting Company, Inc. requested that channel 295C3 be substituted for Channel 295A at Lucedale, Mississippi and that the license for WRBE-FM be modified accordingly. Allen Broadcasting Company, Inc. identified specific co-ordinates for the higher class channel (see page five of "Counter Proposal" of Allen

Broadcasting Company, Inc.). Those co-ordinates are 30-58-45 north latitude and 88-22-35 west longitude. Furthermore, Allen Broadcasting Company, Inc. provided comparative area and population statistics with regard to the Stonewall and Lucedale proposals (see page four of "Counter Proposal), the Counter Proposal also notes (at page five) that the referenced site considers a site restriction of 21.3 kilometers northeast to prevent a short-spaced situation with WXLS-FM, Gulfport, Mississippi, the issue of minimum field strength of the proposed facility (section 73.315 of the Commission's Rules) was addressed on page five of the Counter Proposal as were the issues surrounding Section 73.3333 of the Commission's Rules. Allen Broadcasting Company, Inc. also stated, on page six of its Counter Proposal, that it would file an application for a construction permit for the proposed facility at Lucedale and, if awarded the construction permit, will promptly construct the upgraded facility. Clearly, Allen Broadcasting Company, Inc. has provided the Commission with far more than has traditionally been required in conjunction with a "Counter Proposal" in a Rulemaking proceeding. An actual channel study has never been required by the Commission as an essential element of either a Petition for Rulemaking or a Counter Proposal. As a matter of fact, the FCC's engineering staff routinely conducts its own, in-house channel study when reviewing the proposals submitted to it for consideration. The absence of a channel study, in the Lucedale Counter Proposal, is insignificant and its absence should have no decisional significance with regard to acceptance or rejection of Allen Broadcasting Company, Inc.'s request.

6.) In reviewing the Commission's records, there is no Public Notice which indicates that the Lucedale counterproposal was rejected because of any *deficiency*. Nevertheless, The "Notice of Appearance" submitted by Mr. Lipp on behalf of Mary C. Glass states that ***"This deficiency (the failure to include a "channel study") has apparently caused the Allocations Branch to refuse acceptance of the Lucedale proposal"***. It would appear that Mr. Lipp, the former Chief of the Commission's Allocations Branch, has information which is

not available to the counter proponent in this proceeding. Perhaps Mr. Lipp's former and close association with the staff at the Allocations Branch provides him with greater access to the scheme of the staff's deliberations. In any case, Mr. Lipp has been provided with information which may be prohibited by the Commission's own Ex-Parte Rule (See Section 1.1200 and Section 1.1208 of the Commission's Rules). In checking the status of this proceeding, no information was made available to Allen Broadcasting Company, Inc. that the Commission had decided whether the Lucedale proposal was acceptable in the context of the Stonewall proceeding or that the Commission was deliberating the procedural or substantive sufficiency of the Lucedale counterproposal in light of the fact that the Lucedale proposal did not contain a "channel study". While Mr. Lipp, it is presumed, is certainly well aware of the Ex-Parte Rule, his relationship with the staff members at the Allocations Branch may lull the staff into a less vigilant attitude which can easily result in the dissemination of privileged information in this, a contested proceeding. Allen Broadcasting Company, Inc. is at a total loss to explain how Mr. Lipp received such privileged information regarding the deliberations of the Commission's staff and is quite concerned that Mr. Lipp's former managerial position in the Allocations Branch may lead to either preference for his client or further "inside trading" of information which has not been made equally available to Allen Broadcasting Company, Inc. Obviously, such preferential treatment could dangerously sway this proceeding and the breach of procedural fairness demonstrated thus far causes Allen Broadcasting Company, Inc. to wonder if the deck is already stacked against it. Certainly, the Commission and Mr. Lipp should be required to disclose to Allen Broadcasting Company, Inc. the nature, extent and range of conversations, meetings, letters or other contacts which have been exchanged regarding this matter. Allen Broadcasting Company, Inc. is entitled to fairness, equality and due process but, as indicated, the scope of the information available to Mr. Lipp seems to exceed the scope available to Allen Broadcasting Company, Inc. An explanation is certainly in order.

Respectfully submitted,



Herman Kelly, Executive Vice President
Allen Broadcasting Company, Inc.

WRBE-FM
Highway 198 West
Lucedale, Mississippi 39452

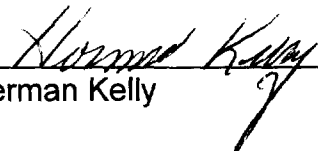
August 23, 1995

Certificate of Service

I, Herman Kelly, do hereby certify that a copy of the foregoing "Allen Broadcasting Company, Inc. Informal Response to Notice of Appearance of Mary C. Glass" was mailed by first-class US Mail, postage prepaid, on this 28th day of August, 1995, to the following:

Richard J. Hayes, Jr., Esq.
13809 Black Meadow Road
Spotsylvania, Virginia 22553
(Counsel to Lisman Community Broadcasting, Inc.)

Mark N. Lipp, Esq.
Mullin, Rhyne, Emmons and Topel, PC
1225 Connecticut Avenue, NW - Suite 300
Washington DC 20036-2604
(Counsel to Mary C. Glass)


Herman Kelly